To sustain the decision in the principal case it will then be necessary to distinguish between the wrongful institution of a prosecution and the wrongful carrying on of one after it has been wrongfully commenced. But is it not a question for serious consideration whether the grounds of public policy which forbid an action for the former prosecution unless it has terminated favorably to the accused do not also apply to this action for the latter wrong? All this is meant by way of argument rather than as criticism.

SHOP-BOOKS WILL UP. — Order XXX. Rule 7, promulgated by the English Supreme Court in August, 1894, to the effect that, on the hearing of the summons, the court or a judge may order that evidence of any particular fact, to be specified in the order, shall be given by statement on oath of information and belief, or by the production of documents or *entries in books*, or by copies of documents or entries, or otherwise as the court or judge may direct, (35 Weekly Notes, 1894, Sept. 1,) is a noteworthy step, and one of some importance in the law of evidence. In spite of the reliance placed by merchants upon the accuracy and trustworthiness of commercial memoranda, account-books, statements, receipts, etc.; in spite of the fact that this confidence in their responsibility as modes of proof has been recognized and enforced in the Roman, French, Scotch and American laws (though to different extents in the various States of the Union); in spite of an English statute (7 Jas. I. c. 12), as yet unrepealed and to be found as still law in Vol. I. of the English "Statutes Revised," p. 691, — the English upper courts, at least, have steadily regarded this admission of shop-book evidence as inconsistent with the principles of common law, and have done their best to discredit it on that ground.

Although text-writers have deplored this attitude of the English courts, as one founded in a misapprehension of the law, and have endeavored to encourage as much as possible the admission of such evidence, (Thayer, Cases on Evidence, 470, note, 506, note; Greenleaf on Evidence, § 118 *et seq.*, and notes; Taylor on Evidence, 7th ed., § 709,) yet with the exception of the relaxation in the Chancery Procedure Act of 1852, the English courts have almost unwaveringly maintained their attitude until the present time. Now, however, by a sudden and decisive change of front, they have boldly adopted in a generalized form that rule against which they so bitterly fought, and, in their latest batch of orders of court, have given a decided recognition of the fact that they had gone too far in discrediting that evidence, on which business men almost implicitly rely.

FLETCHER *v.* RYLANDS. — Although there is probably no decision of the Supreme Court of Massachusetts exactly in point, its tendency, at least, appears hitherto to have been strongly directed toward the doctrine of *Fletcher* v. *Rylands* (L. R. 3 H. of L. 330). That case is cited again and again, in many decisions with marked approbation, in few, if any, with anything approaching disapproval. Indeed, taking in consideration the long and respectable line of dicta that way, it was to be anticipated, perhaps, that that doctrine would finally be adopted as the settled law of the Commonwealth. Such expectations have, however, received a rude shock in the latest decision of that court, *James Cork et al* v. *Barney Blossom et al.*

In this case, an action of tort for the fall of the chimney of a planing mill, caused by a heavy but not unusual gale, the lower court had charged that the ordinary rule of negligence was the test of liability. On exceptions to this charge, the upper court sustained the exceptions, and decided that, whatever the rule was, it was not the ordinary unqualified rule of due care. In the lower court, it appears, the plaintiff had requested instructions, which roughly but practically embodied the modified doctrine of *Fletcher* v. *Rylands* now prevailing in England (5 H. L. R. 186, note 1). As this doctrine was, however, considered by the upper court as giving the plaintiff more than he was entitled to, the question naturally arises, since both the ordinary rule of negligence and that of *Fletcher* v. *Rylands* (a case nowhere expressly mentioned in the decision) appear equally wrong, what is the correct test in the present case? On this point the court's views are decidedly ambiguous. In one place it seems to approach the "ordinary care" rule, in another to adopt a sort of modified *Fletcher* v. *Rylands* rule, in which the defendant is not liable for latent defects which no human foresight could reasonably be expected to anticipate or prevent; in short, after destroying much, the court constructs nothing. What, then, is this case to stand for?

Some light is shed upon this point by the authorities cited. The long line of Massachusetts cases, and the fact that some English decisions are also relied upon, might well lead one to regard the attitude of the court as significant of an unwilling deference to what it could not easily disregard. It does not look *Fletcher* v. *Rylands* squarely in the face. If it approaches that peculiar case at all, it is only by being dragged backwards in its direction; if it adopts it at all, it is only with such sweeping qualifications as to reduce that doctrine to hardly more than that of those cases where, though the want of due care is a necessary element of liability, the mere occurrence of the accident is held to raise a presumption of negligence. It would seem, moreover, that the court's citation of Pollock on Torts, 393, 394, which is practically an authority for the view last mentioned, expresses a strong leaning that way. In any case, the decision bodes ill for the future of *Fletcher* v. *Rylands*, in Massachusetts at least.

LAIDLAW *v.* RUSSELL SAGE (THE DYNAMITE CASE) GOES TO A THIRD TRIAL. — The Supreme Court of New York, General Term, on October 13th, reversed a judgment of the Circuit Court which had been rendered in favor of the plaintiff in the case of *Laidlaw* v. *Sage*, and ordered the case to a third trial (30 N. Y. Sup. 496).

In the HARVARD LAW REVIEW for January, 1894, the opinion of the Supreme Court in this same case, reversing a judgment of the Circuit Court and ordering the case to its second trial, was noticed, the circumstances of the case were stated, and it was suggested that the discussion of the "burden of proof" by the Supreme Court seemed not wholly satisfactory. That suggestion appears to have been justified by the fact that Mr. Justice Patterson of the Circuit Court, at the second trial, was so far misled that he read to the jury an extract from the opinion of the General Term, the effect of which was to charge that the plaintiff was entitled to a recovery unless the defendant should show that the plaintiff's injuries would have been as serious as they were if he had not been interfered with. The Supreme Court now say clearly that this charge was erroneous, and a misrepresentation of their conception, which